

AMENDED IN SENATE JUNE 28, 2006

AMENDED IN SENATE JUNE 14, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

## ASSEMBLY BILL

**No. 2960**

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**Introduced by Assembly Member Ridley-Thomas**

February 24, 2006

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An act to amend Section 454.5 of, *and to add Section 9616 to*, the Public Utilities Code, relating to energy.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2960, as amended, Ridley-Thomas. Energy: electrical corporation procurement plans.

(1) The existing Public Utilities Act requires the ~~commission~~ *Public Utilities Commission* to review and adopt a procurement plan for each electrical corporation in accordance with specified elements, incentive mechanisms, and objectives. Among the objectives that a procurement plan is required to accomplish are to moderate the price risk associated with serving its retail customers and to provide for just and reasonable rates, with an appropriate balancing of price stability and price level in the plan.

~~This bill would require that an additional objective of an electrical corporation's procurement plan is to provide for appropriate incentives to mitigate against price volatility in natural gas supply costs when an electricity supply contract provides for the price of electricity to increase when the price of natural gas used to generate the electricity increases. The bill would make other changes regarding these procurement plans, as specified, to reduce the state's dependence on electricity generated from natural gas.~~

*Existing law authorized the Department of Water Resources (DWR), until January 1, 2003, to enter into contracts for the purchase of electricity, and to sell electricity to retail end-use customers of electrical corporations and, with specified exceptions, local publicly owned electric utilities, at not more than the department's acquisition costs.*

*This bill would require that an electrical corporation's proposed procurement plan include an assessment of the price risk associated with resources used to meet the electricity demands of its retail customers, including an evaluation of the dependency of each resource upon natural gas resources. The bill would require that an electrical corporation's risk management policy, strategy, and practices, include specific measures of price stability that account for natural gas price volatility and supply risks. The bill would delete certain provisions that conditioned an electrical corporation's obligations and the responsibilities of the commission upon allocation of DWR electricity procurement contracts, the creditworthiness of the electrical corporation, and the electrical corporation's resuming procurement of electricity on behalf of its customers. The bill would delete provisions pertaining to operation of power procurement balancing accounts that were in effect until January 1, 2006.*

*(2) Existing law requires that an electrical corporation, as part of the procurement plan process, first meet its unmet electricity resource needs through all available energy efficiency and demand reduction resources that are cost effective, reliable, and feasible. Existing law requires each local publicly owned electric utility, in procuring energy, to first acquire all available energy efficiency and demand reduction resources that are cost effective, reliable, and feasible.*

*This bill would require that an electrical corporation's remaining unmet electricity resource needs not met first through available energy efficiency and demand reduction resources, be met by renewable energy resources that are cost effective, reliable, and feasible, consistent with the California Renewables Portfolio Standard Program. This bill would require that each local publicly owned electric utility, in procuring energy to fulfill its unmet resource needs not met first through available energy efficiency and demand reduction resources, fulfill resource needs by acquiring renewable energy resources that are cost effective, reliable, and feasible.*

~~(2)~~

(3) Under existing law, a violation of the Public Utilities Act or an order or direction of the commission is a crime.

Because ~~the~~ *certain* provisions of this bill would be a part of the act and because a violation of an order or decision of the commission implementing its requirements would be a crime, the bill would impose a state-mandated local program by expanding an existing crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) Natural gas plays a critical role in California's energy  
4 market, with generation of electricity accounting for half of the  
5 natural gas consumed in the state.

6 (b) Natural gas supplies are dwindling nationally and the gap  
7 between demand for, and supplies of, natural gas is widening,  
8 causing an increase in price volatility.

9 (c) Because of price escalation clauses in electricity supply  
10 contracts, natural gas price volatility affects residential,  
11 commercial, and industrial electricity bills and threatens  
12 California's economy.

13 ~~(d) As presently prescribed, California's current programs~~  
14 ~~aimed at increasing procurement of electricity from renewable~~  
15 ~~energy resources have not provided the needed incentives to~~  
16 ~~mitigate against natural gas price volatility and supply risk.~~

17 *(d) While California's programs for promoting energy*  
18 *efficiency and expansion of renewable energy resources for the*  
19 *generation of electricity are important policies for decreasing the*  
20 *state's use of natural gas, additional steps need to be taken to*  
21 *consider natural gas price volatility.*

(e) Wholesale generators, electrical corporations, and gas corporations are the only entities that are in a position to undertake steps to mitigate against natural gas price volatility. ~~and electrical corporations to mitigate against the price volatility and supply risks related to our overdependence on natural gas used to generate electricity by increasing the state's utilization of renewable electricity sources.~~

(f) The Public Utilities Commission should establish appropriate incentives for wholesale generators, and electrical corporations to ~~mitigate against the~~ *consider* price volatility and supply risks related to ~~our overdependence on natural gas used to generate electricity by increasing the state's utilization of renewable electricity sources.~~ *electricity.*

SEC. 2. Section 454.5 of the Public Utilities Code is amended to read:

454.5. (a) The commission shall specify the allocation of electricity, including quantity, characteristics, and duration of electricity delivery, that the Department of Water Resources shall provide under its power purchase agreements to the customers of each electrical corporation, which shall be reflected in the electrical corporation's proposed procurement plan. ~~Each electrical corporation shall file a proposed procurement plan with the commission not later than 60 days after the commission specifies the allocation of electricity. The proposed procurement plan shall specify the date that the electrical corporation intends to resume procurement of electricity for its retail customers, consistent with its obligation to serve. After the commission's adoption of a procurement plan, the commission shall allow not less than 60 days before the electrical corporation resumes procurement pursuant to this section.~~

(b) An electrical corporation's proposed procurement plan shall include, but not be limited to, all of the following:

(1) An assessment of the price risk associated with the electrical corporation's portfolio of resources to meet the electricity demands of its retail customers. The price risk assessment shall include an evaluation of the dependency of each resource upon natural gas resources and shall include a natural gas price and supply forecast associated with continued reliance on the resource through 2017. The portfolio of resources shall include all of the following:

- 1 (A) ~~Utility-retained~~ *Utility-owned* generation.
- 2 (B) Existing electricity purchase and exchange contracts.
- 3 (C) Proposed contracts or purchases of electricity.
- 4 (D) Any remaining open demand to be procured through spot
- 5 market transactions.
- 6 (E) Electricity-related products.
- 7 (F) Electricity demand reduction measures.
- 8 (2) A definition of each electricity product, electricity-related
- 9 product, and procurement related financial product, including
- 10 support and justification for the product type and amount to be
- 11 procured under the plan including a natural gas price and supply
- 12 forecast associated with electric procurement that is reliant on
- 13 natural gas resources through 2017.
- 14 (3) The duration of the plan.
- 15 (4) The duration, timing, and range of quantities of each
- 16 product to be procured.
- 17 (5) A competitive procurement process under which the
- 18 electrical corporation may request bids for procurement-related
- 19 services, including the format and criteria of that procurement
- 20 process.
- 21 (6) An incentive mechanism, if any incentive mechanism is
- 22 proposed, including the type of transactions to be covered by that
- 23 mechanism, their respective procurement benchmarks, and other
- 24 parameters needed to determine the sharing of risks and benefits.
- 25 (7) The upfront standards and criteria by which the
- 26 acceptability and eligibility for rate recovery of a proposed
- 27 procurement transaction will be known by the electrical
- 28 corporation prior to execution of the transaction. This shall
- 29 include an expedited approval process for the commission's
- 30 review of proposed contracts and subsequent approval or
- 31 rejection thereof. The electrical corporation shall propose
- 32 alternative procurement choices in the event a contract is
- 33 rejected.
- 34 (8) Procedures for updating the procurement plan.
- 35 (9) A showing that the procurement plan will achieve the
- 36 following:
  - 37 (A) The electrical corporation will, in order to fulfill its unmet
  - 38 resource needs and in furtherance of Section 701.3, until a 20
  - 39 percent renewable resources portfolio is achieved, procure
  - 40 renewable energy resources with the goal of ensuring that at least

1 an additional 1 percent per year of the electricity sold by the  
2 electrical corporation is generated from renewable energy  
3 resources, provided sufficient funds are made available pursuant  
4 to Section 399.6, to cover the above-market costs for new  
5 renewable energy resources.

6 (B) The electrical corporation will create or maintain a  
7 diversified procurement portfolio consisting of both short-term  
8 and long-term electricity and electricity-related and demand  
9 ~~reductions products and electricity procured from renewable and~~  
10 ~~natural gas resources consistent with the policies and incentives~~  
11 ~~described herein.~~

12 ~~(C) Pursuant to the policies of the Energy Action Plan adopted~~  
13 ~~in 2003 and subsequently affirmed in the implementation~~  
14 ~~strategies outlined in Energy Action Plan II, the electrical~~  
15 ~~corporation will first meet its unmet resource needs through all~~  
16 ~~available energy efficiency and demand reduction resources that~~  
17 ~~are cost effective, reliable, and feasible. All new generation~~  
18 ~~needs shall first be met by renewable energy resources and~~  
19 ~~distributed generation. Other unmet needs shall be met by clean~~  
20 ~~and efficient fossil fuel generation.~~  
21 ~~reduction products.~~

22 *(C) The electrical corporation will first meet its unmet*  
23 *resource needs through all available energy efficiency and*  
24 *demand reduction resources that are cost effective, reliable, and*  
25 *feasible. Remaining unmet resource needs shall first be met by*  
26 *renewable energy resources that are cost effective, reliable, and*  
27 *feasible, consistent with Article 16 (commencing with Section*  
28 *399.11) of Chapter 2.3.*

29 (10) The electrical corporation's risk management policy,  
30 strategy, and practices, including specific measures of price  
31 stability, that shall account for natural gas price volatility and  
32 supply risks.

33 (11) A plan to achieve appropriate increases in diversity of  
34 ownership and diversity of fuel supply of nonutility electrical  
35 generation.

36 (12) A mechanism for recovery of reasonable administrative  
37 costs related to procurement in the generation component of  
38 rates.

39 (c) The commission shall review and accept, modify, or reject  
40 each electrical corporation's procurement plan. The

1 commission's review shall consider each electrical corporation's  
2 individual procurement situation, and shall give strong  
3 consideration to that situation in determining which one or more  
4 of the features set forth in this subdivision shall apply to that  
5 electrical corporation. A procurement plan approved by the  
6 commission shall contain one or more of the following features,  
7 provided that the commission may not approve a feature or  
8 mechanism for an electrical corporation if it finds that the feature  
9 or mechanism would ~~impair the restoration of an electrical~~  
10 ~~corporation's creditworthiness or would lead to a deterioration of~~  
11 an electrical corporation's creditworthiness:

12 (1) A competitive procurement process under which the  
13 electrical corporation may request bids for procurement-related  
14 services. The commission shall specify the format of that  
15 procurement process, as well as criteria to ensure that the auction  
16 process is open and adequately subscribed. Any purchases made  
17 in compliance with the commission-authorized process shall be  
18 recovered in the generation component of rates.

19 (2) An incentive mechanism that establishes a procurement  
20 benchmark or benchmarks and authorizes the electrical  
21 corporation to procure from the market, subject to comparing the  
22 electrical corporation's performance to the  
23 commission-authorized benchmark or benchmarks. The incentive  
24 mechanism shall be clear, achievable, and contain quantifiable  
25 objectives and standards. The incentive mechanism shall contain  
26 balanced risk and reward incentives that limit the risk and reward  
27 of an electrical corporation.

28 (3) Upfront achievable standards and criteria by which the  
29 acceptability and eligibility for rate recovery of a proposed  
30 procurement transaction will be known by the electrical  
31 corporation prior to the execution of the bilateral contract for the  
32 transaction. The commission shall provide for expedited review  
33 and either approve or reject the individual contracts submitted by  
34 the electrical corporation to ensure compliance with its  
35 procurement plan. To the extent the commission rejects a  
36 proposed contract pursuant to this criteria, the commission shall  
37 designate alternative procurement choices obtained in the  
38 procurement plan that will be recoverable for ratemaking  
39 purposes.

(d) A procurement plan approved by the commission shall accomplish each of the following objectives:

(1) Enable the electrical corporation to fulfill its obligation to serve its customers at just and reasonable rates.

(2) Eliminate the need for after-the-fact reasonableness reviews of an electrical corporation's actions in compliance with an approved procurement plan, including resulting electricity procurement contracts, practices, and related expenses. However, the commission may establish a regulatory process to verify and assure that each contract was administered in accordance with the terms of the contract, and contract disputes which may arise are reasonably resolved.

(3) Ensure timely recovery of prospective procurement costs incurred pursuant to an approved procurement plan. The commission shall establish rates based on forecasts of procurement costs adopted by the commission, actual procurement costs incurred, or combination thereof, as determined by the commission. The commission shall establish power procurement balancing accounts to track the differences between recorded revenues and costs incurred pursuant to an approved procurement plan. The commission shall review the power procurement balancing accounts, not less than semiannually, and shall adjust rates or order refunds, as necessary, to promptly amortize a balancing account, according to a schedule determined by the commission. ~~Until January 1, 2006, the commission shall ensure that any overcollection or undercollection in the power procurement balancing account does not exceed 5 percent of the electrical corporation's actual recorded generation revenues for the prior calendar year excluding revenues collected for the Department of Water Resources. The commission shall determine the schedule for amortizing the overcollection or undercollection in the balancing account to ensure that the 5 percent threshold is not exceeded. After January 1, 2006, this~~ *This* adjustment shall occur when deemed appropriate by the commission consistent with the objectives of this section.

(4) Moderate the price risk associated with serving its retail customers, including the price risk embedded in its long-term supply contracts, by authorizing an electrical corporation to enter into financial and other electricity-related product contracts.



1 (5) Provide for just and reasonable rates, with an appropriate  
2 balancing of price stability and price level in the electrical  
3 corporation's procurement plan.

4 ~~(6) Provide for appropriate incentives to mitigate against~~  
5 ~~natural gas price volatility and supply risks in electric generation~~  
6 ~~and reduce our dependence on electricity generated from natural~~  
7 ~~gas resources.~~

8 (e) The commission shall provide for the periodic review and  
9 prospective modification of an electrical corporation's  
10 procurement plan.

11 (f) The commission may engage an independent consultant or  
12 advisory service to evaluate risk management and strategy. The  
13 reasonable costs of any consultant or advisory service is a  
14 reimbursable expense and eligible for funding pursuant to  
15 Section 631.

16 (g) The commission shall adopt appropriate procedures to  
17 ensure the confidentiality of any market sensitive information  
18 submitted in an electrical corporation's proposed procurement  
19 plan or resulting from or related to its approved procurement  
20 plan, including, but not limited to, proposed or executed power  
21 purchase agreements, data request responses, or consultant  
22 reports, or any combination, provided that the Office of  
23 Ratepayer Advocates and other consumer groups that are  
24 nonmarket participants shall be provided access to this  
25 information under confidentiality procedures authorized by the  
26 commission.

27 (h) Nothing in this section alters, modifies, or amends the  
28 commission's oversight of affiliate transactions under its rules  
29 and decisions or the commission's existing authority to  
30 investigate and penalize an electrical corporation's alleged  
31 fraudulent activities, or to disallow costs incurred as a result of  
32 gross incompetence, fraud, abuse, or similar grounds. Nothing in  
33 this section expands, modifies, or limits the State Energy  
34 Resources Conservation and Development Commission's  
35 existing authority and responsibilities as set forth in Sections  
36 25216, 25216.5, and 25323 of the Public Resources Code.

37 (i) An electrical corporation that serves less than 500,000  
38 electric retail customers within the state may file with the  
39 commission a request for exemption from this section, which the  
40 commission shall grant upon a showing of good cause.

(j) (1) Prior to its approval pursuant to Section 851 of any divestiture of generation assets owned by an electrical corporation ~~on or after the date of enactment of the act adding this section~~ corporation, the commission shall determine the impact of the proposed divestiture on the electrical corporation's procurement rates and shall approve a divestiture only to the extent it finds, taking into account the effect of the divestiture on procurement rates, that the divestiture is in the public interest and will result in net ratepayer benefits.

(2) Any electrical corporation's procurement necessitated as a result of the divestiture of generation assets on or after the effective date of the act adding this subdivision shall be subject to the mechanisms and procedures set forth in this section only if its actual cost is less than the recent historical cost of the divested generation assets.

(3) Notwithstanding paragraph (2), the commission may deem proposed procurement eligible to use the procedures in this section upon its approval of asset divestiture pursuant to Section 851.

*SEC. 3. Section 9616 is added to the Public Utilities Code, to read:*

*9616. Each local publicly owned electric utility, in procuring energy to fulfill resource needs that are not met pursuant to Section 9615, shall first acquire renewable energy resources that are cost effective, reliable, and feasible.*

~~SEC. 3.~~

*SEC. 4.* No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.